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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,705	11/09/2000	Francisco J. Romero	10002676-1	4633

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EXAMINER

LUU, LE HIEN

ART UNIT PAPER NUMBER

2141

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/709,705

Applicant(s)

ROMERO ET AL.

Examiner

Le H Luu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Claims 1-21 are presented for examination.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language,

or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 1-21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lumelsky et al. (Lumelsky) patent no. 6,516,350.
4. As to claim 1, Lumelsky teaches the invention as claimed, including a method to automatically activate a reserve resource, comprising:
 - monitoring a load on a number of active resources (col. 8 lines 48-60);
 - comparing said load to a threshold specified in a resource usage policy (col. 9 line 65 – col. 10 line 12); and
 - automatically activating said reserve resource when dictated by said resource usage policy (col. 8 line 48 – col. 9 line 38).

5. As to claim 2, Lumelsky teaches updating said resource usage policy after said reserve resource is activated (col. 11 line 48 – col. 12 line 25).

6. As to claim 3, Lumelsky teaches balancing said load among said number of active resources and said activated reserve resource (col. 10 lines 17-44; col. 11 line 48 – col. 12 line 25).

7. As to claim 4, Lumelsky teaches monitoring a combined load on said number of active resources and said activated reserve resource; comparing said combined load to a second threshold specified in a second resource usage policy; deactivating a resource selected from said number of active resources and said activated reserve resource when dictated by said second resource usage policy; and indicating that said selected resource is deactivated (col. 8 line 61 – col. 9 line 14; col. 11 lines 30-46).

8. As to claim 5, Lumelsky teaches signaling an event manager based on said monitored load as dictated by said resource usage policy (col. 11 line 64 – col. 12 line 25).

9. As to claims 6-8, Lumelsky teaches said resource usage policy dictates activating said reserve resource when said monitored load exceeds said threshold for a predetermined occurrence; when said monitored load exceeds said threshold for a

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period of time; or when said threshold is met, and wherein said resource usage policy dictates activating said reserve resource when a response to said number of alarms is not received (col. 10 line 66 – col. 12 line 25; col. 13 line 66 – col. 14 line 9).

10. As to claim 9, Lumelsky teaches updating a configuration profile to include said activated reserve resource, said update being made in response to said indication that said reserve resource is activated (col. 10 line 66 - col. 11 line 9).

11. As to claim 10, Lumelsky teaches charging a user of said activated reserve resource a fee, said charge being made in response to said indication that said reserve resource is activated (col. 12 line 65 – col. 13 line 20).

12. Claims 11-21 have similar limitations as claims 1-10; therefore, they are rejected under the same rationale.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu, whose telephone number is (703) 305-9650. The examiner can normally be reached Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231


or faxed to:

(703) 872-9306, (for formal communications; please mark
"EXPEDITED PROCEDURE").

Or:

(703) 872-9306 (for informal or draft communications, please label
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



LE HIEN LUU
PRIMARY EXAMINER

February 19, 2004